

Introduced by Senator Figueroa

December 2, 2002

An act to amend Section 7159 of the Business and Professions Code, relating to home improvement contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 30, as introduced, Figueroa. Home improvement contracts.

Existing law requires home improvement contracts between contractors and homeowners or tenants to comply with specified requirements, and makes a violation of these provisions a crime.

This bill would, in addition, require that these contracts be written in plain language and to be written, organized, and designed so that they are easy to read and understand. Because the bill creates new crimes, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 7159 of the Business and Professions
- 2 Code is amended to read:
- 3 7159. This section applies only to home improvement
- 4 contracts, as defined in Section 7151.2, between a contractor,

1 whether a general contractor or a specialty contractor, who is
2 licensed or subject to be licensed pursuant to this chapter with
3 regard to the transaction and who contracts with an owner or tenant
4 for work upon a residential building or structure, or upon land
5 adjacent thereto, for proposed repairing, remodeling, altering,
6 converting, modernizing, or adding to the residential building or
7 structure or land adjacent thereto, and where the aggregate
8 contract price specified in one or more improvement contracts,
9 including all labor, services, and materials to be furnished by the
10 contractor, exceeds five hundred dollars (\$500).

11 Every home improvement contract and every contract, the
12 primary purpose of which is the construction of a swimming pool,
13 is subject to this section. Every contract and any ~~changes in~~ *change*
14 *to* the contract subject to this section shall be evidenced by a
15 writing and shall be signed by all the parties to the contract. ~~The~~
16 ~~writing~~ *Every contract and any change to the contract subject to*
17 *this section shall be written in plain language and shall be written,*
18 *organized, and designed so that it is easy to read and understand.*
19 *Every contract subject to this section shall contain all of the*
20 *following:*

21 (a) The name, address, and license number of the contractor,
22 and the name and registration number of any salesperson who
23 solicited or negotiated the contract.

24 (b) The approximate dates when the work will begin and on
25 which all construction is to be completed.

26 (c) A plan and scale drawing showing the shape, size,
27 dimensions, and construction and equipment specifications for a
28 swimming pool and for other home improvements, a description
29 of the work to be done and description of the materials to be used
30 and the equipment to be used or installed, and the agreed
31 consideration for the work.

32 (d) If the payment schedule contained in the contract provides
33 for a downpayment to be paid to the contractor by the owner or the
34 tenant before the commencement of work, the downpayment may
35 not exceed two hundred dollars (\$200) or 2 percent of the contract
36 price for swimming pools, or one thousand dollars (\$1,000) or 10
37 percent of the contract price for other home improvements,
38 excluding finance charges, whichever is less.

39 (e) A schedule of payments showing the amount of each
40 payment as a sum in dollars and cents. In no event may the payment



1 schedule provide for the contractor to receive, nor may the
2 contractor actually receive, payments in excess of 100 percent of
3 the value of the work performed on the project at any time,
4 excluding finance charges, except that the contractor may receive
5 an initial downpayment authorized by subdivision (d). With
6 respect to a swimming pool contract, the final payment may be
7 made at the completion of the final plastering phase of
8 construction, provided that any installation or construction of
9 equipment, decking, or fencing required by the contract is also
10 completed. A failure by the contractor without lawful excuse to
11 substantially commence work within 20 days of the approximate
12 date specified in the contract when work will begin shall postpone
13 the next succeeding payment to the contractor for that period of
14 time equivalent to the time between when substantial
15 commencement was to have occurred and when it did occur. The
16 schedule of payments shall be stated in dollars and cents, and shall
17 be specifically referenced to the amount of work or services to be
18 performed and to any materials and equipment to be supplied.
19 With respect to a contract that provides for a schedule of monthly
20 payments to be made by the owner or tenant and for a schedule of
21 payments to be disbursed to the contractor by a person or entity to
22 whom the contractor intends to assign the right to receive the
23 owner's or tenant's monthly payments, the payments referred to in
24 this subdivision mean the payments to be disbursed by the assignee
25 and not those payments to be made by the owner or tenant.

26 (f) A statement that, upon satisfactory payment being made for
27 any portion of the work performed, the contractor shall, prior to
28 any further payment being made, furnish to the person contracting
29 for the home improvement or swimming pool a full and
30 unconditional release from any claim or mechanic's lien pursuant
31 to Section 3114 of the Civil Code for that portion of the work for
32 which payment has been made.

33 (g) The requirements set forth in subdivisions (d), (e), and (f)
34 do not apply when the contract provides for the contractor to
35 furnish a performance and payment bond, lien and completion
36 bond, bond equivalent, or joint control approved by the registrar
37 covering full performance and completion of the contract and the
38 bonds or joint control is or are furnished by the contractor, or when
39 the parties agree for full payment to be made upon or for a schedule
40 of payments to commence after satisfactory completion of the



1 project. The contract shall contain, in close proximity to the
2 signatures of the owner and contractor, a notice in at least 10-point
3 type stating that the owner or tenant has the right to require the
4 contractor to have a performance and payment bond.

5 (h) No extra or change-order work may be required to be
6 performed without prior written authorization of the person
7 contracting for the construction of the home improvement or
8 swimming pool. No change-order is enforceable against the
9 person contracting for home improvement work or swimming
10 pool construction unless it clearly sets forth the scope of work
11 encompassed by the change-order and the price to be charged for
12 the changes. Any change-order forms for changes or extra work
13 shall be incorporated in, and become a part of, the contract. Failure
14 to comply with the requirements of this subdivision does not
15 preclude the recovery of compensation for work performed based
16 upon quasi-contract, quantum meruit, restitution, or other similar
17 legal or equitable remedies designed to prevent unjust enrichment.

18 (i) If the contract provides for a payment of a salesperson's
19 commission out of the contract price, that payment shall be made
20 on a pro rata basis in proportion to the schedule of payments made
21 to the contractor by the disbursing party in accordance with
22 subdivision (e).

23 (j) The language of the notice required pursuant to Section
24 7018.5.

25 (k) What constitutes substantial commencement of work
26 pursuant to the contract.

27 (l) A notice that failure by the contractor without lawful excuse
28 to substantially commence work within 20 days from the
29 approximate date specified in the contract when work will begin
30 is a violation of the Contractors' State License Law.

31 (m) If the contract provides for a contractor to furnish joint
32 control, the contractor shall not have any financial or other interest
33 in the joint control.

34 A failure by the contractor without lawful excuse to
35 substantially commence work within 20 days from the
36 approximate date specified in the contract when work will begin
37 is a violation of this section.

38 This section does not prohibit the parties to a home
39 improvement contract from agreeing to a contract or account



1 subject to Chapter 1 (commencing with Section 1801) of Title 2
2 of Part 4 of Division 3 of the Civil Code.

3 The writing may also contain other matters agreed to by the
4 parties to the contract.

5 The writing shall be legible and shall be in a form that clearly
6 describes any other document that is to be incorporated into the
7 contract. Before any work is done, the owner shall be furnished a
8 copy of the written agreement, signed by the contractor.

9 For purposes of this section, the board shall, by regulation,
10 determine what constitutes “without lawful excuse.”

11 The provisions of this section are not exclusive and do not
12 relieve the contractor or any contract subject to it from compliance
13 with all other applicable provisions of law.

14 A violation of this section by a licensee, or a person subject to
15 be licensed, under this chapter, or by his or her agent or
16 salesperson, is a misdemeanor punishable by a fine of not less than
17 one hundred dollars (\$100) nor more than five thousand dollars
18 (\$5,000), or by imprisonment in the county jail not exceeding one
19 year, or by both that fine and imprisonment.

20 (n) Any person who violates this section as part of a plan or
21 scheme to defraud an owner of a residential or nonresidential
22 structure, including a mobilehome or manufactured home, in
23 connection with the offer or performance of repairs to the structure
24 for damage caused by a natural disaster, shall be ordered by the
25 court to make full restitution to the victim based on the person’s
26 ability to pay, as defined in subdivision (e) of Section 1203.1b of
27 the Penal Code. In addition to full restitution, and imprisonment
28 authorized by this section, the court may impose a fine of not less
29 than five hundred dollars (\$500) nor more than twenty-five
30 thousand dollars (\$25,000), based upon the defendant’s ability to
31 pay. This subdivision applies to natural disasters for which a state
32 of emergency is proclaimed by the Governor pursuant to Section
33 8625 of the Government Code or for which an emergency or major
34 disaster is declared by the President of the United States.

35 (o) (1) An indictment or information against a person who is
36 not licensed, but who is required to be licensed under this chapter,
37 shall be brought, or a criminal complaint filed, for a violation of
38 this section within four years from the date the buyer signs the
39 contract.

1 (2) An indictment or information against a person who is
2 licensed under this chapter shall be brought, or a criminal
3 complaint filed, for a violation of this section within one year from
4 the date the buyer signs the contract.

5 (3) The limitations on actions in this subdivision shall not apply
6 to any administrative action filed against a licensed contractor.

7 SEC. 2. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 the only costs that may be incurred by a local agency or school
10 district will be incurred because this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section 17556 of
13 the Government Code, or changes the definition of a crime within
14 the meaning of Section 6 of Article XIII B of the California
15 Constitution.

